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June 18, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 6, 2007

Case Number: TSO-0473

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") for access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and documentary evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that access authorization should not be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The notification letter indicated a concern regarding the individual's financial responsibility. In this regard, the letter noted that in March 2006, two of the individual's credit cards were

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<sup>1</sup>/ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

several months tardy, and had delinquent balances of several hundred dollars each. In one of those accounts, the full balance was greater than the account's credit limit. Secondly, the letter stated that as of January 2006, he was two months behind on his mortgage payments. Further, he made no mortgage payments in February or March 2006 and made a one-half payment in April. The notification letter stated that the individual reached a new agreement with the mortgage holder in which the bank added the four tardy payments, along with applicable penalties interest and fees (totaling \$9,078) to the individual's mortgage balance, increasing his monthly payments by approximately \$170 a month (restructured mortgage). The individual's first mortgage payment under the new agreement was due on October 1, 2006. Moreover, the letter noted that since 1989, when the individual was initially granted a security clearance, he has filed for chapter 13 bankruptcy (1998)<sup>2</sup>, and has had four personnel security interviews and received approximately 11 Letters of Interrogatory, each of which concerned some facet of his financial condition.

The letter states that these facts give rise to a security concern under Section 710.10(1) (Criterion L), which in relevant part pertains to conduct showing a pattern of financial irresponsibility.

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual represented himself and testified on his own behalf. He brought forward no witnesses. The DOE Counsel also did not present any witnesses at this hearing.

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2/ On May 16, 2001, the bankruptcy was discharged. Thus, although the specific debts which gave rise to the bankruptcy are not a security concern at this point, the fact that the individual's financial position became sufficiently unstable so as to cause him to declare bankruptcy is part of the overall concern in this case.

## II. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

## III. The Hearing: Testimony and Documentary Evidence

The focus of the hearing was to assess the individual's current financial stability. Transcript of Hearing (Tr.) at 5. For that purpose, prior to the hearing, the individual submitted the following evidence to support his position that he is now financially responsible: (i) a packet of documents referred to as

the May 11 packet<sup>3</sup>; and (ii) a packet of documents referred to as the May 8 packet. At the hearing, we examined in detail each of the documents included in the packets. We discussed thoroughly what each document was, and what the individual believed each document established. The discussion below sets forth a description of each document and a review of the testimony regarding each document.<sup>4</sup>

A. May 11 Packet

1. Document 1: Statement from Individual's Mortgage Holder

This document, dated May 8, 2007, is a letter from the holder of the mortgage on the individual's home. The letter states that the individual's mortgage "is currently paid up to date through May 31, 2007."<sup>5</sup> The individual testified that his current monthly mortgage payments are "restructured" payments. The restructuring was necessary because he fell behind in his mortgage payments for "at least five months." The individual has been paying the "restructured amount" since October 2006. The individual's April 13, 2007 credit report indicates that the individual was late in his mortgage payments in nearly every month during the period April 2005 through February 2006. DOE Exhibit 9. Although the individual maintains that he has been timely on his mortgage payments since October 2006, the April 13, 2007 credit report indicates that the November 2006 payment was past due. The individual was unable to explain this. Tr. at 12.

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3/ This information was OHA date-stamped on May 14, 2007.

4/ With respect to the May 8 packet, I have omitted a discussion of a bank statement pertaining to the individual's savings account, and a letter from a bank changing, at the individual's request, the day of the month on which payment is due for Credit Card #1, one of the credit cards discussed in the text.

5/ The 2007 is not legible on this copy. However, given that the letter is clearly dated May 8, 2007, I believe the assertion that the paid-up date is May 31, 2007.

2. Document 2: Individual's Handwritten Statement Regarding Bank Credit Card #1 and Bank Credit Card #2

This document is a statement written by the individual indicating the account numbers for these two credit cards. The individual then testified in more detail about the status of each of these two credit cards.

With respect to Credit Card #1, the individual submitted a letter from the bank issuing the card to the effect that it had received the individual's "payoff amount of \$1,148.00 by the date agreed upon in our settlement arrangement." This is confirmed by Document 5 of the May 11 packet, the individual's May 14, 2007 bank statement, showing a withdrawal in the amount of \$1,148.00. This account has therefore been settled. The individual has indicated that he has cut up the card associated with this account and will no longer use the account. Tr. at 20.

With respect to Credit Card #2, the individual testified that it has been "in collection with several different agencies." Tr. at 21. According to the April 13 credit report, there is currently a balance on this credit card of \$869. The credit report also shows that untimely payments were made in connection with this credit card from 2005 to 2006, and that the card was considered a "bad debt" and placed for collection. The individual testified that there is still a balance on the card, but that he made two payments of \$175 each in December 2006 and January 2007, leaving a new balance of \$519. Tr. at 29. He is not sure why these amounts were not posted to the account. However, there is some evidence that he made a payment of \$175 in December 2006, which the individual claims was made to a law firm that either is now or was the holder of the collection account. Tr. at 26. May 11 packet, Document 3. Nevertheless, the individual made no payments on this card during April or May 2007. Tr. at 30.

3. Document 4: Collection Company Statement Involving Auto Loan For Vehicle Number 1

This document is a statement from a collection company and involves an auto loan taken out by the individual. The statement indicates that the individual has agreed to pay an initial down payment of \$325 on or before May 1, 2007, and \$325 due on the 11<sup>th</sup> of each month starting June 11, 2007. The individual stated that the collection agency's "bought down" balance on the vehicle is

\$7,051.96. Tr. at 32. He further testified that he made a payment of \$325 to the recovery agency. Tr. at 31-36. Document 5 of the May 11 packet (Individual's May 14, 2007 bank statement) shows that this recovery agency was paid \$332 from the individual's account on May 12. Thus, the individual's auto debt is "in collection," but he has made a payment towards reducing the debt.

4. Document 6: Comcast Bill

This document is a "Comcast" bill for the individual's cable television and internet services. The monthly amount for these services is \$110, payable one month in advance. Tr. at 38. The bill shows a payment received by May 6, 2007, of \$225. As of May 6, 2007, there was still a balance on this account of \$178.32. Tr. at 36. The individual testified that he was therefore currently about \$68 in arrears on this account, but stated he has paid a few dollars of that amount. Tr. at 38-39.

5. Document 7: Creditor Holding Auto Loan for Vehicle Number 2

This document is a record from a creditor holding an auto loan taken out by the individual for vehicle number 2.<sup>6</sup> This statement shows that the individual owes \$5,947.20. It further indicates that the individual has been late 11 times on his payments, and further notes that he may not make his payments by personal check. He was also given a 42-day payment extension in April 2007. However, according to the statement, as of May 15, 2007, the individual was up to date on his payments. Tr. at 40-49.

B. May 8 Packet

1. Document 1: Sprint Telephone Statement

This statement involves the individual's cell phone account. It is dated April 25, 2007, and indicates that there is no amount owed on this account. The individual has made a hand-written notation on the bill that the "account is currently closed until finances are better." Tr. at 51-52.

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<sup>6/</sup> The copy of this document included in the May 11 packet is illegible. The individual provided a more legible copy at the hearing, which is denominated Individual's Hearing Exhibit 3.

2. Document 2: MCI Telephone Bill

This statement, dated April 7, 2007, shows that the individual was paid up on this account as of that date, and owed \$83.80 current charges due on April 28. There is no evidence showing that the individual had made this \$83.80 payment as of May 15, the date of the hearing. Tr. at 52.

3. Document 3: Utility Bill

This document is a utility bill from the city where the individual lives. It is dated April 19, 2007. It indicates that there were total arrears of \$175.77, which the individual paid. The bill further notes that a disconnect notice was sent. The current balance on this bill is \$131.52, which was due on May 10. The individual had not paid this bill as of the hearing date, May 15. Tr. at 53-55.

4. Document 4: Statement for Checking Account #1

This three-page statement, dated May 3, 2007, displays account activity from April 4 through May 5, 2007. It appears that there were four occasions on which the account was overdrawn during that period. On May 3, there was a balance of \$0.55 in this account. Tr. at 56-59.

Overall, the individual gave as an explanation for his financial difficulty the fact that he missed work due to illness for two months in 2005 and from late February through May 2006. This, in turn, caused him to lose premium pay. Transcript of Personnel Security Interview at 5,11. The individual maintains that this reduction in income created some of the financial problems that he is currently facing. Tr. at 77.

IV. Analysis

As is evident from the above discussion of the testimony and documentary evidence, the individual has attempted to correct some of the arrearage and non-payments in his long-term debts and current bills. For example, he has fully paid off Credit Card #1 in the amount of \$1,148. He is attempting to pay off Credit Card #2, and there is only a small balance left on this card, about \$519. He has made a payment towards reducing his current auto loan that is "in collection." He paid off some arrears on his Comcast bill. He is

up to date on his auto loan for vehicle number 2. This is all in the individual's favor.

On the other hand, the weight of the evidence indicates to me that the individual's financial position is not yet stable. There have been serious mortgage payment problems for the individual within the last 18 months. The individual has tried to make some amends by restructuring his mortgage, and, as of May 2007, he was up to date. However, overall, he has only been participating in this restructured program for about six months. I do not believe that this rather short time period is sufficient for me to conclude that the individual has established that he will continue in the future to make the payments regularly and on time.

The individual made no payments on Credit Card # 2 in April or May 2007. He did not pay his May 2007 Comcast bill in a timely manner, and ended up in arrears. There is considerable tardiness in his payments on his auto loan for vehicle number 2. His telephone bill for April 7, 2007, indicates that he was current on that date, but there was no evidence that as of the date of the May 15 hearing, the individual had made the payment due on April 28. The individual's utility bill dated April 19, 2007, shows arrears of \$175.77 and further indicates that the individual had not paid a bill for \$131.52, due on May 10. The individual stated that he did not have funds to pay this bill on time. Tr. at 54. The statement for the individual's checking account #1, indicates that there were four occasions during the period April 4 through May 5 on which the account was overdrawn, and on May 3, there was a balance of just \$0.55. These facts indicate the individual's continuing financial instability.

I have taken into account the individual's assertion that his unstable financial picture arose due to illness during 2005 and February through May 2006. However, that most recent illness took place about one year ago. I note that in the last two months, April and May 2007, the individual has not been up to date in some of his most basic accounts, including telephone, credit card, Comcast and utility. The individual has not explained why he has not been able to pay even these basic monthly expenses in a timely manner.

When taken individually, none of the debt, arrearage or tardiness is particularly grave. Yet, when viewed as a whole, the current financial picture at this point is not a sound one. The individual has a number of accounts that have been restructured or are in collection and, in my view, there has not been sufficient time to



establish that he will make payments on these accounts regularly and responsibly. Moreover, many of the additional payments he has made on his accounts took place just days before the hearing. I am inclined to believe that these mitigating steps were taken simply in contemplation of and in response to the instant administrative review proceeding, rather than due to the individual's overall desire to establish an improved financial status. In this regard, the individual has had a troublesome financial pattern since 1989. Because of the above factors, I am concerned that the individual may not be committed to adhering in any long term way to a financially responsible course of action.

#### V. CONCLUSION

As indicated above, I find that the individual's financial status is not yet sufficiently stable for me to conclude that he has mitigated the Criterion L financial concerns. It is therefore my decision that his suspended access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: June 18, 2007